COURT OF APPEALS
DECISION
DATED AND FILED

May 22, 2001

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

NOTICE

No. 00-2623

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

DAVID MCILQUHAM AND TIMOTHY CALLAHAN,
ALLEN SPAETH AND TIMOTHY MOWER,
D/B/A M & C ENTERPRISES, INC., LLC,

PLAINTIFFS-RESPONDENTS,

V.

COUNTY OF CHIPPEWA BOARD OF ADJUSTMENT,

DEFENDANT-RESPONDENT,

TOWN OF ANSON, A QUASI-MUNICIPAL WISCONSIN CORPORATION,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Chippewa County: THOMAS J. SAZAMA, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. The Town of Anson appeals a judgment affirming a decision of the Chippewa County Board of Adjustment that allows several property owners to construct a recreational pond along with their single family residences in an area zoned for agricultural use. The Town argues that the board's decision was invalid because it did not cite proper reasons for its decision and that its decision was arbitrary, unreasonable and unsupported by the record.[1] We reject these arguments and affirm the judgment.

¶2 The parties submitted this matter to the trial court on stipulated facts. The key facts are that the land owners intend to construct and occupy single family residences on the real estate and intend to construct an artificial pond for their private, recreational use. The pond would not be used for commercial, industrial or other purposes. Although the board and the parties refer to other aspects of the board's decision as "findings of fact," its decision to allow the construction is based on its interpretation of the ordinances and should be viewed as a question of law. The board concluded that the ordinances do not require board of adjustment approval for the creation of a private recreational pond and do not regulate construction of such a pond if it is considered an accessory use to a farm or home.

¶3 The board gave adequate reasons for its decision. It approved the zoning administrator's report that utilized the ordinance's definition of accessory use as "a use subordinate in nature, extent or purpose to the principal use of a building or lot." The report concluded that a principal use in the agricultural district would be general farming or any type of residential development. The

[1] The town also raises issues regarding alleged errors and inconsistencies in the trial court's decision. Because this court reviews the board's decision, we do not address alleged errors in the trial court's decision. *See* ***Liberty Trucking Co. v. DILHR***, 57 Wis. 2d 331, 342, 204 N.W.2d 457 (1973).

board concluded that constructing a recreational pond as an accessory use to a farm or home does not require board approval and is not regulated by the zoning ordinances. *See* ***Czap v. Czap***, 269 Wis. 557, 561, 69 N.W.2d 488 (1955). The town complains that the board's ruling does not state that this proposed "ski pond" use is found to be "accessory use." Under any fair reading of the board's decision, the parties' stipulated facts and the ordinance definition of accessory use, the proposed recreational pond was found to be subordinate in nature, extent or purpose to the principal use of the lot. No additional findings, conclusions or explanations are necessary. The parties' stipulation provides all of the facts necessary to support the board's conclusion.

¶4 The Town contends that if the pond is an unregulated accessory use, then the board should not have approved a "zoning permit." We disagree. Under the board's construction of the zoning ordinances, the permit was either surplusage or provided conditions merely to assure that the land owners' use would qualify as an accessory use.[2]

¶5 The Town's principal argument is that the term "accessory use" or "accessory structure" should be limited to uses and structures that are "customarily incident to the permitted uses." The argument fails because the ordinance defines accessory use and the definition does not include any limitation to uses and structures that are "customarily incidental." When the phrase is specifically defined in an ordinance, no other rule of statutory construction need be applied. *See* ***Beard v. Lee Enters.***, 225 Wis. 2d 1, 23, 591 N.W.2d 156 (1999). In addition,

[2] Under the terms of the permit, a home must be built before the accessary pond can be constructed. No commercial use is allowed, and the pond must be created by internal landscaping with no mineral extraction.

public policy favors the free and unrestricted use of property. *See* ***Crowley v. Knapp***, 94 Wis. 2d 421, 434, 288 N.W.2d 815 (1980). Before an ordinance may be construed to restrict the use of property, the ordinance must be written in clear, unambiguous and peremptory terms. ***Cohen v. Dane County Bd. of Adj.***, 74 Wis. 2d 87, 91, 246 N.W.2d 112 (1976). Therefore, this court cannot add the term "customarily incidental" to the ordinance to further restrict use of the land.[3]

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (1999-2000).

[3] In addition to its argument that the board construed "accessory use" too generously, the Town argues that the board's decision was arbitrary, oppressive or unreasonable and represented its will instead of its judgment. We will not separately address those issues because they were not squarely raised in the trial court. In any event, it appears that these arguments rely on the Town's proposed limited definition of "accessory use."